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Dedication

This work is dedicated to the memory of my late brother, Richard Addo.

My love for you remains as deep as the ocean, and wide as the sea.

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Mr. Solomon Baffoe of the Ghana Shipping Authority deserves thanks for facilitating my admission into the school at such a short notice.

My greatest thanks go to God, for making it possible for this dream to become a reality.

International Conventions

1. International Convention for the Prevention of Pollution from Ships, 1973 as modified by the 1978 Protocol. The Convention was adopted on 2 November 1973. The 1978 Protocol was adopted in February 1978. Both instruments entered into force on 2 October 1983 as a single document.

2. Bamako Convention on the Ban of the Import into Africa and the Control of Trans boundary Movement and Management of Hazardous Wastes within Africa. This was adopted in Bamako, Mali on 30 January 1991 and entered into force on 22 April 1998.

3. The United Nations Conference on the Human Environment, 1972 (1972 Stockholm Declaration). This was made in Stockholm, Sweden on 16 June 1972.

4. The Convention on the Territorial Sea and the Contiguous Zone, 1958. This was adopted in Geneva, Switzerland on 29 April 1958 and entered into force on 10 September 1964.

5. The Convention on the High Seas, 1958. It was signed 29 April 1958 and entered into force 30 September 1962.

6. The Convention on Fishing and Conservation of the Living Resources of the High Seas, 1958. This was adopted on 29 April 1958 and entered into force on 20 March 1966.

7. The Convention on the Continental Shelf, 1958. This was adopted in Geneva, Switzerland on 29 April 1958 and entered into force on 10 June 1964.

8. International Convention Relating to Intervention on the High Seas in cases of Oil Pollution Casualties, 1969. This was adopted on 26 November 1969 and entered into force on 6 May 1975.

9. Protocol to the International Convention Relating to Intervention on the High Seas in Cases of Pollution by Substances Other than Oil, 1973. This was adopted on 2 November 1972 in London UK and entered into force on 30 March 1983.

10. 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. This was adopted in Vienna, Austria on 20 December 1988 and entered into force on 11 November, 1990.

11. United Nations Convention on the Law of the Sea, 1982. This was adopted in Montego Bay, Jamaica on 10 December 1982 and entered into force on, 16 November 1994.

Statute

GHANA

1. 1992 Constitution of Ghana

Abbreviations

1. AU – African Union
2. I.MO. – International Maritime Organization
3. MARPOL 73 – International Convention for the Prevention of Pollution from Ships, 1973
4. MARPOL 78 – 1978 Protocol amendment to International Convention for the Prevention of Pollution from Ships, 1973
5. The Intervention Convention – International Convention Relating to Intervention on the High Seas in cases of Oil Pollution Casualties, 1969
6. The 1973 Protocol – Protocol to the International Convention Relating to Intervention on the High Seas in Cases of Pollution by Substances Other than Oil, 1973
7. UNCLOS I – United Nations Conference on the Law of the Sea, 1958
8. UNCLOS II – United Nations Conference on the Law of the Sea, 1960
9. U.K – United Kingdom
10. UNCLOS – United Nations Convention on the Law of the Sea, 1982
11. 1972 Stockholm Declaration – Declaration of the United Nations Conference on the Human Environment, 1972
12. 1991 Bamako Convention – Bamako Convention on the Ban of the Import into Africa and the Control of Trans boundary Movement and Management of Hazardous Wastes within Africa

INTRODUCTION

A safe environment, it cannot be disputed holds the key to a fulfilling life, and the general survival of not only humans, but all other living organisms in the ecosystem. One of the most effective ways of ensuring a safe environment is through the control of marine pollution. Effective control of marine pollution is important, not only for the general health of the marine environment, but also for the conservation of fish stocks and coastal ecology.[1] This notwithstanding, it was only in the latter half of the twentieth century that environmental problems came to the forefront of international relations, mainly as a result of the appreciation of the international nature of many pollutions, not only in their impact, but the realization that, they required international solutions.[2]

Oil pollution from ships had been recognized as one of the areas which required an international solution and as far back as in 1926 and 1936, attempts had been made, albeit unsuccessfully, to adopt a convention.[3] The birth of the International Convention for the Prevention of Pollution by Oil 1954 was therefore as a result of this international concern. Its popularity is grounded on the fact that there were 71 parties to this Convention, representing over 90% of the world's tonnage.[4] The subsequent realization of challenges within the Convention and efforts having been made to rectify same resulted in the adoption of the **'***International Convention for the Prevention of Pollution from Ships'*, known as MARPOL 73, then subsequently amended by MARPOL 78.[5]

Apart from oil as a pollutant to the sea, there are also 'other substances which are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.'[6] 'Other substances' means toxic and hazardous

[1] Birnie Patricia, Boyle Alan & Redgewell Catherine; International Law and the Environment, 3rd edition, Oxford University Press, 2009, p. 380.
[2] Abecassis, W. David & Jarashow L. Richard; Oil Pollution from Ships, 2nd edition, Stevens & Sons Limited, London UK, 1985, p. 12.
[3] Ibid.
[4] Ibid p. 20.
[5] Brubaker, Douglas; Marine Pollution and International Law, Belhaven Press Ltd, London UK, 1993, p121.
[6] Article 1 (2) (b) of The Protocol to the international Convention Relating to Intervention on the High Seas in Cases of Pollution by Substances Other than Oil,1973.

substances that pollute the sea. It is now not in doubt that large quantities of almost any chemical substance can harm humans, living organisms, and the environment. Toxic and hazardous substances can cause significant damage in small, even minuscule amounts.[7] The deliberate disposal into the sea from ships or aircraft of waste loaded on board for this purpose used to be a legitimate means of disposal in the past. The popularity of marine dumping was due partly to the inexpensiveness and the ease of disposal and also partly due to the tightening of pollution controls on land.[8] This form of marine pollution is estimated to account for about 10% of the total marine waste disposed, whether land or sea based. The materials dumped include radioactive materials and highly toxic waste.[9]

Over the years, several attempts have been made to regulate such toxic and noxious substances which pollute the sea. These have been largely through the international community adopting broad policy guidelines, because hazardous substances were not regulated by any single international organization or treaty.[10] An example is Principle 6 of the 1972 Stockholm Declaration which stated that ‘’the discharge of toxic substances or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious or irreversible damage is not inflicted upon the ecosystem.’’[11] The Organization of African Unity (now known as AU) in 1991 also supported the adoption of a treaty on the trade in and management of hazardous substances, known as ‘*Bamako Convention on the Ban of the Import into Africa and the Control of Trans boundary Movement and Management of Hazardous Wastes Within Africa*’(1991 Bamako Convention.)[12]

All these efforts by the international community, however failed to address a yawning gap. This was in relation to empowering a Coastal State to intervene on the high seas, in situations where

[7] Manahan E. Stanley; International Environmental law in a Nutshell, 3rd edition, West Publishing Co. MN. USA, 2007, p. 328.
[8] Brubaker, Douglas; p. 37.
[9] Ibid p106.
[10] Sands, Philippe; Principles of International Environmental Law, 2nd edition, Cambridge university Press, Cambridge UK, 2003, p. 619.
[11] Ibid.
[12] Ibid p. 106.

its coastline is in danger of pollution, arising out of a maritime casualty on the high seas, without infringing the principle of freedom of the high seas and the doctrine of the exclusive jurisdiction of the flag State over ships on the high seas.

CHAPTER 1: THE HANDICAP OF THE COASTAL STATES

The Legal Regime before 1982

Despite these laudable attempts by the international community to prevent, control and minimize pollution to the marine environment over the years, it is a fact that marine environmental protection had attracted little attention at UNCLOS I and UNCLOS II.[13] The main focus during UNCLOS I and UNCLOS II had been to discuss and attempt to delimit the boundaries of the territorial sea as well as the fisheries zone.[14]

It was also manifest that the Coastal States who bore the brunt of marine pollution, had limited powers in enforcing laws on pollution, in the other marine spaces or regimes on the sea, apart from the territorial and internal waters.

Until the United Nations Convention on the Law of the Sea, 1982 was adopted; the regimes of the seas were largely regulated by four (4) main Conventions.[15] These Conventions were adopted at the first United Nations Convention on the Law of the Sea, 1958 (UNCLOS 1) in Geneva. These Conventions were:

(a) The Convention on the Territorial Sea and the Contiguous zone,

(b) The Convention on the High Seas,

(c) The Convention on Fishing and Conservation of the Living Resources of the High Seas and,

[13] Tanaka, Yoshifumi; The International Law of the Sea, Cambridge University Press, Cambridge UK, 2012 p25. UNCLOS I refers to the first United Nations Conference on the Law of the Sea which took place in 1958 in Geneva, Switzerland. UNCLOS II refers to the second United Nations Conference on the Law of the Sea which also took place in Geneva, Switzerland in 1960.
[14] Ibid p. 23-24.
[15] Ibid p. 22.

(d) The Convention on the Continental Shelf.

To a large extent, these Conventions regulated the powers of States on their rights and powers with regard to the marine regimes, with emphasis on the Coastal States. The 1958 Geneva Conventions divided the ocean into three basic categories: internal waters, territorial sea and high seas.[16]

Territorial and Internal Waters

The right of a Coastal State to exercise rights and powers within its territory was never in doubt under the Convention on the Territorial Sea and the Contiguous Zone. Article 1(1) of the Convention reads as follows:

> The sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea.

Article 2 of the Convention also reads as follows:

> The sovereignty of a coastal State extends to the air space over the territorial sea as well as to its bed and subsoil.

In the exercise of its sovereignty, the Coastal State was empowered to make laws and regulations to regulate all ships exercising their right of innocent passage through its territorial waters.[17]

[16] Tanaka, Yoshifumi; p. 23.
[17] Article 17.

The Coastal State was also given powers, subject to some conditions to exercise criminal jurisdiction over foreign ships within its territorial and internal waters.

Article 19 (1) (2) of the Convention reads:

> 1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases:
>
> (a) If the consequences of the crime extend to the coastal State; or
>
> (b) If the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; or
>
> (c) If the assistance of the local authorities has been requested by the captain of the ship or by the consul of the country whose flag the ship flies; or
>
> (d) If it is necessary for the suppression of illicit traffic in narcotic drugs.
>
> 2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

The Contiguous Zone

Under the Convention on the Territorial Sea and the Contiguous Zone, the contiguous zone formed part of the high Seas and was to be measured by twelve miles from the baseline from which the breadth of the territorial sea was measured.[18]

Article 24 of the Convention on the Territorial Sea and the Contiguous Zone gave some powers to the Coastal State with regard to the making and enforcement of laws and regulations on

[18] Article 24 (2).

customs, fiscal, immigration and sanitary within its territory or the territorial sea. These powers could involve the boarding and searching of foreign vessels.

Article 24(1) reads:

> 1. In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to:
>
> (a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;
>
> (b) Punish infringement of the above regulations committed within its territory or territorial sea.

In spite of these powers given to the Coastal State within the Contiguous zone, it was clear that its powers over foreign vessels within the zone were limited. This was understandable as it was part of the high seas. Even though the Coastal State was also vested with the right of 'hot pursuit', which was the legitimate chase of a foreign vessel on the high seas, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.[19]

This implies that if there should be a maritime casualty involving a foreign ship within the Contiguous Zone, resulting in pollution which affects the coastal belt or territorial sea of the Coastal State, the Coastal State was powerless in taking any measures against that ship.

[19] Article 23 of the Convention on the High Seas, 1958.

The High Seas

Article 1 of the Convention on the High Seas, 1958 defines the high seas as all parts of the sea that are not included in the territorial sea or in the internal waters of a State. It is within the regime of the high seas that the greatest handicap of the Coastal State can be identified. This is in relation to the limited jurisdiction that a coastal State has on the high seas due to 'the principle of the freedom of the high seas'. The principle of the freedom of the high seas was established in the early nineteenth century.[20] The principle has two meanings. In the first place, it means that the high seas are free from national jurisdiction.[21] This meaning is made clear in the first line of Article 2 of the Convention of the high seas, which reads:

> The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty……

The second meaning which flows from the first is that as the high seas are free from the national jurisdiction of any state, each and every State has an equal right to enjoy the freedom to use the high seas in conformity with international law.[22] These freedoms have been well captured in Article 2 of the Convention on the High Seas, 1958. It is stated that:

> …….. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, inter alia, both for coastal and non-coastal States:
>
> (1) Freedom of navigation;
>
> (2) Freedom of fishing;

[20] Brerly, J.L; The Law of Nations: An Introduction to the International Law of Peace, 6th Ed, Oxford Clarendon Press, Oxford UK, 1963, p. 205.
[21] Tanaka, Yoshifumi; p. 151.
[22] Ibid.

(3) Freedom of lay submarine cables and pipelines;

(4) Freedom to fly over the high seas.

These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.

By the doctrine of exclusive jurisdiction, a Coastal State is not allowed to arrest or detain a foreign ship on the high seas, even as a measure of investigation.[23] Therefore by the doctrine, a Coastal State was impotent to take action against other ships on the high seas.[24]

An exception is where a foreign ship is involved in piracy on the high seas. Under that circumstance, any State may seize the ship or aircraft, arrest the persons and seize the property on board.[25] Another exception to this doctrine is the right of hot pursuit. This refers to the legitimate chase of a foreign vessel on the high seas following a violation of the law of the pursuing State committed by the vessel within the marine spaces under the pursuing States' jurisdiction.[26]

Therefore in the event of any maritime casualty on the high seas, if there was the likelihood of pollution or threat of pollution which could extend to the coastline of the Coastal State as a result of the casualty, she had no right or authority to take any measures on the high seas in respect of this foreign ship.

It was against the background of all these limitations that a major maritime casualty involving the ship, 'TORREY CANYON' occurred on the high seas in 1967. There was a massive oil spill,

[23] Article 11 (3) of the Convention on the High Seas, 1958.
[24] Article 6 of the Convention on the High Seas, 1958.
[25] Article 19 of the Convention on the High Seas, 1958.
[26] Tanaka, Yoshifumi: p. 163.

resulting in devastating environmental pollution affecting hundreds of miles of the coasts of France, UK, Spain and Guernsey. The dilemma of the UK (as a Coastal State), and subsequent unilateral action on the high seas against the ship, resulted in a global reawakening and a rethinking of the options which should be taken by a Coastal State, when confronted with a threat of pollution to its coastline, as a result of a maritime casualty on the high seas.

CHAPTER TWO: THE 'TORREY CANYON' DISASTER

2.1 The Background Facts

The "Torrey Canyon" was an oil tanker built in the USA in 1959 and registered in Liberia. It was owned by a Bermuda company, ''Bermuda Tanker Corporation'', (a subsidiary of "Union Oil Co.'' of California) with its principal office in New York. The ship which had an original capacity of 60,000 tons was enlarged to a capacity of 120,000.[27] Measuring 974.4ft (297.0 m) long, with a beam of 125.4ft (38.2 m) and a draught of 68.7ft (20.9 m), it was regarded as a super tanker during its time. The ship was chartered to British Petroleum (BP). On 19th February 1967, the ship, heavily laden with crude oil of about 118,000 tons from Kuwait National Petroleum Co. Refinery at Mina Al Ahmadi, was to discharge it in Milford Haven, Wales.

On the 17th of March 1967, the ship was within the Canary Islands coast. The Master of the ship, Captain Rugiata, an Italian, received a message from the agent of BP that he had to make haste in order to arrive by 11pm that same night as he would miss high tide and be unable to enter the harbor at the agreed time. The Master, taking a shortcut, made a navigational error, striking 'Pollard Rock' on the 'Seven Stones Reef', between the Cornish mainland and the Isles of Scilly, causing damage to the hull and the tank of the ship and causing every drop of the tonnes of crude oil to spill and seep into the Atlantic Ocean.[28]

The ship broke up into two as attempts to salvage it was unsuccessful, claiming one life. The oil was discharged into the sea, causing enormous pollution to the coasts of Brittany and Cornwall.[29] Large scale detergents were deployed in an unsuccessful attempt to break down the oil by BP. About 10,000 tons of detergents were used in the clean-up exercise. Using special nets to scoop up the oil was also abortive. Harold Wilson, the then Prime Minister of the UK, took a decision

[27] Tankers, Big Oil and Pollution; http://www.oilpollutionliability.com/the-torrey-canyon/ (Accessed on 6TH December, 2014)
[28] Oil Spills; Legacy of The Torrey Canyon, http://www.theguardian.com/environment/2010/jun/24/torrey-canyon-oil-spill-deepwater-bp (Accessed on 7th December, 2014).
[29] Ibid.

with his cabinet to bomb the vessel as a means of burning up the oil. 42 bombs were dropped on the vessel before it sank. Aviation fuel and Napalm were all applied to the oil to set it alight.[30]

2.2 Environmental Damage

A distinguishing feature of the 'Torrey Canyon' response operation was the excessive and indiscriminate use of early dispersants and solvent based cleaning agents, which caused considerable environmental damage.[31]

The effects of this unilateral action by the UK in relation to the 'Torrey Canyon' caused extensive damage to the coastline of Brittany and Cornwall. The oil slick covered an area of 270 sq. miles. The oil lay so thick that 3,000 tonnes could be pumped directly into sewage tankers. When the tanker broke up, a slick formed and drifted south and remained at sea for two months.[32]

Efforts to clean oiled seabirds proved largely futile, as they succumbed to hypothermia, stress, and poisoning from ingested oil killing over 15,000 seabirds and other marine organisms. Thousands of dead birds coated in oil littered the beaches.[33]

The chemicals that were used to dissipate the oil were toxic in nature. This meant that while they were succeeding in the clean-up operation, they were simultaneously harming the marine plants and animals with these toxic substances. The marine environment was therefore being destroyed both ways.[34]

[30] http://www.nmmc.co.uk/index.php%3F/collections/featured_pictures/remembering_the_torrey_can (accessed on 6th February, 2015).
[31] http://www.itopf.com/in-action/case-studies/case-study/torrey-canyon-united-kingdom-1967/ (accessed on 6th February, 2015).
[32] http://www.joyeresearchgroup.uga.edu/public-outreach/marine-oil-spills/other-spills/torrey-canyon (accessed on 10th February, 2015).
[33] http://www.marineinsight.com/marine/life-at-sea/maritime-history/how-the-torrey-canyon-disaster-destroyed-the-marine-environment/ (accessed on 6th February, 2015).
[34] Ibid.

The spilled oil turned the beaches from golden brown to black, affected the wildlife, fishing and tourism for the local population.[35] In the words of a resident of Porthmeor Beach in St Ives, Cornwall, whose golden beaches and soft sands had been a major attraction for tourists over the years:

> The powerful oily stench hit you first, then the sight. What had been a beautiful blue-green sea had become brown, churning, frothing, and fluid. What had been golden sand was now completely obscured by a thick layer of red-brown sludge.
>
> It took quite a while to remove the worst of it and even years afterwards you could still get tar or oil on your clothes if you sat on the beach.[36]

The ‘’Torrey Canyon” disaster occurred in 1967, but efforts are still underway to clear up oil in disused quarries on the island of Guernsey, in the English Channel off the coast of Normandy. The quarried oil in Guernsey remains there today, appearing as a solid surface on which birds land, become entrapped, and die. When oil is removed from the quarry or water levels and pressure changes, the oil refreshes from the sediment below.[37]

An incident report by the National Oceanic and Atmospheric Administration of the U.S.A reads as follows:

> Early estimates indicated rapid recovery of species along the beach, while long term studies revealed extremely slow recovery. Wave-beaten rocky areas that received only light oiling took approximately 5-8 years to return to normal while areas receiving heavy and repeated dispersant applications took 9-10 years to

[35] Baris, Soyer Prof. & Tettenburn, Andrew Prof: Pollution at Sea; Law and Liability, Informa UK Ltd, 2012, pgs3-4.
[36] http://www.bbc.co.uk/cornwall/content/articles/2007/03/19/torrey_canyoon_feature.shtml (accessed on 6th February, 2015).
[37] http://www.joyeresearchgroup.uga.edu/public-outreach/marine-oil-spills/other-spills/torrey-canyon (accessed on 10th February, 2015).

recover. A 1978 study showed that a rare hermit crab species had not re-appeared in the spill area. [38]

The enormous environmental disaster unleashed by the ‘’Torrey Canyon” incident, caused not only an uproar worldwide, but also caused the world to wake up from its slumber. There was a sudden realization for the need of a Convention, setting out the legal parameters within which a Coastal State could intervene in case of a maritime casualty on the high seas, when such casualty has the potential of dire environmental consequences on her coastline.

[38] Ibid.

CHAPTER 3 THE BIRTH OF THE INTERNATIONAL CONVENTION RELATING TO INTERVENTION ON THE HIGH SEAS IN CASES OF OIL POLLUTION CASUALTIES, 1969 AND ITS PROTOCOL

The 'Torrey Canyon' disaster was the world's worst maritime oil spill of all time until 1967. Its huge negative impact acted as a catalyst for States to converge in Brussels, Belgium in 1969 to deliberate on it, and to come out with modalities to avert such unilateral action being taken by a State in case of any maritime casualty in future. The offspring of that meeting was the *'International Convention Relating to Intervention on the High Seas in cases of Oil Pollution Casualties, 1969'* (hereinafter also called *'The Intervention Convention)* which sets out the conditions and the circumstances under which a Coastal State could intervene on the High Seas in case its coastline is threatened by a maritime casualty on the high seas. The Convention came into force on 6th may, 1975.

3.1 The Brussels Conference, 1969

The environmental pollution as a result of the oil spill and the unilateral action taken by the UK, raised an uproar. A conference was therefore convened in Brussels, Belgium to address the issue. Questions were asked whether a State had the right to unilaterally take action on the high seas as a means of protecting its own coastline, as the UK had done, and if so, to what extent could a Coastal State go in asserting its jurisdiction on the High Seas when its actions adversely affected other States.

The principle of the Freedom of the High Seas, espoused in the Convention on the High Seas, 1958[39] came into sharp focus. This was because it was clear that the action of the UK, went beyond its powers as a Coastal State under 'The Convention on the High Seas, 1958'. Her action had contravened two sacred international law principles, namely, the exclusive jurisdiction of the flag State over ships on the high seas, and the freedom of the high seas.

[39] Article 2.

The United Nations Convention on the High Seas, 1958 stated clearly that save in exceptional cases expressly provided for in international treaties, ships sailing on the high seas were to be subject to the exclusive jurisdiction of the flag State.[40] As a Coastal State, UK had no right to take an action against the ship of another flag State on the high seas. It amounted to exercising jurisdiction over the ship of another flag State on the high seas.

The action of the UK also went against the principle of the Freedom of the High Seas as it impeded the freedom navigation. Freedom of navigation was one of the many freedoms guaranteed on the high seas. Each and every State has an equal right to enjoy the freedom to use the high seas in conformity with international law. This is very key for shipping and had been secured not only in the Convention on the High Seas, 1958, but also in the United Nations Convention on the Law of the Sea, 1982 which succeeded it.

Closely related to the above reasons was how best to safeguard the interests of the cargo owners as well as the ship owners on the high seas. This is because the action of the UK brought some measure of uncertainty and insecurity while ships were sailing on the high seas. The action of the UK, if not checked, meant that any Coastal State could unilaterally take action against a foreign ship and cargo when it felt that its coastlines were threatened by the threat of pollution, without regard to the interests of the ship owners or cargo owners.

The massive environmental pollution of the coastline of Brittany and Cornwall as a result of the oil spill, as well as the extensive use of detergents to clean up, made it imperative that a moderating formula be found to strike a balance in the event of a similar incident on the high seas, affecting the coastline of a Coastal State.

In the light of all these freedoms, and the restrictions on a State exercising jurisdiction on the high seas, the issue of allowing a State to intervene on the high seas in respect of a marine

[40] Article 6 (1) of the Convention on the High Seas, 1958.

casualty, which had implications for other coastal and non-coastal States alike, was resolved in the Intervention Convention, striking a fine balance between rights and responsibilities. This is because for once, a Convention had been born to protect the legitimate interests of ship-owners, cargo owners, the flag States and the principle of the freedom of the high seas.

It is this same balancing format that was extended to the Protocol to the International Convention Relating to Intervention on the High Seas in Cases of Pollution by Substances Other than Oil, 1973(with Annexed List of Polluting Substances).As at 2014, eighty eight (88) States had become parties to the Convention.[41]

3.2 The London Conference, 1973

In view of the ever increasing quantity of other substances, mainly chemicals which are carried by ships, some of which if released, could cause serious hazard to the marine environment, parties to the Intervention Convention recognized the need to broaden the scope and extend the Convention to include substances other than oil. The parties to the Intervention Convention met in London in 1973 at a Conference on marine pollution and adopted the *'Protocol to the International Convention Relating to Intervention on the High Seas in Cases of Pollution by Substances Other than Oil, 1973(with Annexed List of Polluting Substances)'***,** and hereinafter also called 'The 1973 Protocol'.

This extended the regime of the 1969 Convention to substances which are either listed in the annex to the 1973 Protocol or which have characteristics substantially similar to those

[41] Digplanet: http://www.digplanet.com/wiki/International_Convention_Relating_to_Intervention_on_the_High_Seas_in_Cases_of_Oil_Pollution_Casualties (Accessed on 8th December, 2014)

substances. The 1973 Protocol entered into force in 1983 and was amended in 1996 and 2002 to update the list of substances attached to it.[42]

Currently fifty-five (55) Contracting States of the Intervention Convention are parties to the Protocol, representing approximately 51.48% of the gross tonnage of the world's merchant shipping.[43]

[42] http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-Relating-to-Intervention-on-the-High-Seas-in-Cases-of-Oil-Pollution-Casualties.aspx (Accessed on 8th December, 2014)
[43] IMO Circular (PSI. 1Circ.58 7/4/2014).

CHAPTER 4: THE STRUCTURE OF THE INTERNATIONAL CONVENTION RELATING TO INTERVENTION ON THE HIGH SEAS IN CASES OF OIL POLLUTION CASUALTIES, 1969

4.1 From the Preamble to the Annex

The Intervention Convention consists of twenty seven (27) articles with another nineteen (19) Articles in an accompanying annex. In its preamble, it acknowledges the grave consequences of maritime casualty, resulting in danger of oil pollution to the environment. It further acknowledges that in such circumstances, measures of an exceptional character might be necessary on the high seas, and that these measures do not affect the principle of freedom of the high seas.

The **preamble** summarizes the compromise reached at the Brussels Conference between the States who wanted to jealously guard the principle of freedom on the high seas and those Coastal States who felt that they should be allowed to intervene to take measures of an exceptional character in the event of a maritime casualty on the high seas which could have dire consequences on their coastline, in respect of oil pollution. An exception had therefore been made to the sacred principle of freedom of the high seas.

Article I makes provision for States to take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or any related interests from pollution or threat of pollution of the sea by oil as a result of maritime casualty or acts related to such a casualty which may reasonably be expected to result in major consequences. It however exempts warships or any ship owned or operated by a State and which is being used for governmental non-commercial service. In this article, the circumstances that would qualify a Coastal State to invoke the provisions of the Intervention Convention are clearly stipulated. This was very necessary to ensure that the Coastal States do not abuse this power to intervene on the high seas, setting clear parameters.

The exemption of warships and ships owned or operated by a state for governmental and non-commercial services, from the ambits of the Intervention Convention was consistent with State practice and had been stipulated in the Convention on the High Seas, 1958.[44]

Article III is conditions that have been laid down whenever a Coastal State is invoking its right to intervene on the high seas. It stipulates what the State should do before, during and after it had undertaken those measures. It states that before taking any measures, it shall hold consultations with other States affected by a maritime casualty, especially the flag State(s). The Coastal State is required to notify without delay the proposed measures to all persons (physical or corporate), made known to it during consultations, whose interests could be affected by those measures she would want to take. A Coastal State is required to take into account the views of all such persons in formulating the sort of measures it wants to undertake on the high seas in dealing with the maritime casualty.

The Coastal State is required to also consult with independent experts, from a list maintained by the International Maritime Organization (IMO). In cases of extreme urgency, the State is at liberty to take measures without prior notification or consultation or without continuing with consultations already began. It is also enjoined to avoid any risk to human life, offer assistance to persons in distress as well as the affected ships' crew.

Lastly, the Coastal State is also enjoined to notify the Secretary-General of IMO of any measures it takes on the high seas. This provision helps to secure the interests of the ship owner, cargo owner, the flag State of the vessel involved in the maritime casualty, as well as any State likely to be affected by the taking of any measures on the high seas by the Coastal State. This is because the prior consultations with these parties would enable their views to be taken into consideration by the Coastal State before she intervenes.

[44] Articles 8(1) and 9.

The mandatory consultation of experts by the Coastal State prior to undertaking any intervention on the high seas, allows for professionalism to be the guide before, during or after the intervention by a Coastal State. This would thus help to avoid the unprofessional manner in which the oil slick of the "Torrey Canyon" was handled after the accident. The excessive use of detergents in that case caused as much harm to the environment as the oil slick.

By consulting with experts, the article also seeks to avoid the situation whereby the decision whether to intervene or not is swayed by political considerations. Public opinion could ginger a government to intervene, even if the situation may not be necessary. In respect of the "Torrey Canyon" incident, the public pressure that was brought to bear on the government played a factor in the intervention on the high seas.

The notification of the Secretary-General of the IMO by the Coastal State of all measures taken on the high seas, acts as a form of accountability of such State to the Organization.

The article also takes into consideration measures that would not result in loss of human life and to offer assistance to persons in distress as well as to facilitate the repatriation of the crew if necessary. This provision is important as the crew's welfare may be ignored during such times of crisis. The Coastal State may be thinking more of her interests and not those of the crew, whose negligence may even have caused the maritime casualty on the high seas.

In cases of extreme urgency, the Coastal State is authorized to take measures immediately, without prior notification or consultation, or without continuing consultations already began. This provision is realistic enough in making provision for the Coastal State to take action on the high seas in emergency situations. Since most disasters occur suddenly and may need immediate attention in containing it, this is a welcome provision for the Coastal States. However, the requirement to still notify the Secretary-General of the IMO, the affected States, as well as

physical or corporate persons concerned without delay, is also to check an abuse of this emergency power given to the Coastal State.

Article IV makes provision for the IMO to set up and maintain a list of experts, with nominations being made by member States. The IMO is also to make regulations to regulate the work of these experts.

This provision empowers the IMO to standardize the criteria of who qualifies to be appointed as an expert by making regulations to that effect. Such a provision ensures that only persons actually qualified as experts are nominated. This is very critical as their advice could have serious repercussions for the environment, ship owners, cargo owners and even human life.

Article V requires any measures taken by the Coastal State to be proportionate to the damage, actual or threatened to it. It goes further to give guidelines to be taken into account in determining whether measures to be taken by a Coastal State are proportionate or not.

Such guidelines would help the Coastal State to take several factors into consideration before intervening on the high seas in the event of a maritime casualty. A Coastal State would have to balance the benefits and demerits for such an intervention before doing so.

Article VI makes provision for compensation to be paid by any party taking measures in contravention of the Convention which causes damage to others, to the extent caused by measures which exceed what was necessary.

This serves three main purposes. In the first place, it provides an avenue for the ship owner, cargo owner and the States affected by the measures taken by the Coastal State to be compensated for any damages they may suffer.

Secondly, it could be deduced that it is not every damage that would merit compensation. The only damage that would merit compensation was one which went beyond what was reasonably necessary to prevent, mitigate or eliminate grave and imminent danger to the Coastal State's coastline or related interests from pollution of the sea by oil after a maritime casualty on the high seas.

Thirdly, the fact that a Coastal State would have to pay compensation for any excessive measures which result in damage to others is expected to act as a self-restraint mechanism on the Coastal State.

Article VII states that except as specifically provided in the Convention, a party is at liberty to also resort other remedies that are available in respect of a right, duty, privilege or immunity that such a party may be entitled to, whether such a person is a physical or corporate entity. These are procedural safeguards that are guaranteed to a party affected by measures taken by a Coastal State on the high seas.

Article VIII deals with conflict resolution of inevitable disputes that may arise between the parties. In the event of inability of the parties to settle the matter, the case would proceed to conciliation, but if it's still not resolved, then to arbitration as set out in the annex to the Convention. To avoid protracted litigation and to promote reconciliation among feuding parties, the Convention makes provision for non-adversarial mechanisms for the resolution of the conflicts. These alternative dispute resolution mechanisms save time, and expense when compared with courtroom litigation.

Articles IX-XVII deals with the procedure for States or Specialized Agencies to sign, ratify, accept, approve or accede to the Convention as well as for denunciation, and amendments.

The annex, made up of nineteen (19) articles gives details as regards the procedure for conciliation and arbitration, as required by Article V.

The annex is very comprehensive and leaves no room for doubt as to the procedure to adopt when negotiation between the parties fail. This helps to standardize the procedure for all States who are parties to the Convention.

CHAPTER 5: THE STRUCTURE OF THE PROTOCOL TO THE INTERNATIONAL CONVENTION RELATING TO INTERVENTION ON THE HIGH SEAS IN CASES OF POLLUTION BY SUBSTANCES OTHER THAN OIL, 1973 (WITH ANNEXED LIST OF POLLUTING SUBSTANCES)

5.1 From the Preamble to the Annex

The 1973 Protocol comprises of eleven (11) Articles and an annexure containing the list of chemicals which are part of what is referred to as 'Substances other than oil' in the 1973 Protocol. The Preamble makes clear the purpose of the 1973 Protocol, namely; to ensure that a holistic approach was adopted with regards to all aspects of maritime pollution arising out of a maritime casualty on the high seas.

Article I allows for parties under the 1973 Protocol to take such measures on the high seas as are necessary to avert or eliminate any danger to its coastline from substances other than oil, as a result of a maritime casualty. It also gives room for other substances analogous to what is contained in the annex to qualify under the definition of 'substances other than oil' provided that they are hazardous to human health, marine life and other legitimate uses of the sea.

Articles II and III enjoin that the list of experts which are to be maintained by the IMO under the Intervention Convention should also include experts qualified to give advice in relation to substances other than oil. This therefore expands the caliber of expertise that would be at the disposal of the Coastal States at the consultation stage, in determining whether or not to intervene, and the implications for the environment.

The rest of the Articles, namely, **IV-XI** mainly deal with the processes leading to the coming into force of the 1973 Protocol as well as its amendments and denunciation.

The Annex contains the list of part of the chemicals constituting 'Substances other than oil' as described under the 1973 Protocol. This list of chemicals has since the adoption of the 1973 Protocol in 1973 been amended four (4) times, namely in 1991, 1996, 2002, and 2007.[45]

[45] http://cil.nus.edu.sg/1973/1973-protocol-relating-to-intervention-on-the-high-seas-in-cases-of-pollution-by-substances-other-than-oil/ (accessed on 18/4/15).

CHAPTER 6: THE NEED FOR GHANA TO INCORPORATE THE INTERVENTION CONVENTION AND ITS PROTOCOL

6.1 Corporate Image on the international plane

Ghana was a signatory to the 1969 Convention on 29th November 1969, and ratified it on 20th April, 2014. This Convention has been in force since the 19th of July, 1978. Having expressed its intention on the international plane to be bound by this Convention, it is imperative that it does what is expected of it, by having the convention incorporated under its law. The 1973 Protocol is just a follow up to the 1969 Convention. An incorporation of the 1969 Convention without an accession to the 1973 Protocol and subsequent incorporation in its law would make it incomplete due to their close interrelation as they are meant to complement each other. In short it would improve the image of Ghana and parade it as a good citizen within the IMO. The current chairman of the Legal Committee of IMO, Dr. Kofi Mbiah, is a Ghanaian. Ghana needs to set a good example in making sure that Conventions under the auspices of the IMO, are given effect to, in its domestic laws.

6.2 Handicap as a Coastal State

The United Nations Convention on the Law of the Sea, 1958 has been superseded by the United Nations Convention on the Law of the Sea, 1982. This notwithstanding, inherent limitations that were placed on a Coastal State under the United Nations Convention on the Law of the Sea, 1958 with regard to its inability to exercise any jurisdiction on the high seas are still evident within the United Nations Convention on the Law of the Sea, 1982.

Article 89 of the United Nations Convention on the Law of the Sea, 1982 reads:

No State may validly purport to subject any part of the high seas to its sovereignty.

The traditional principle of the freedom of the high seas is also once again enshrined in the United Nations Convention on the Law of the Sea, 1982. Article 87(1) (2) reads:

> 1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:
>
> (a) Freedom of navigation;
> (b) Freedom of over flight;
> (c) Freedom to lay submarine cables and pipelines, subject to Part VI;
> (d) Freedom to construct artificial islands and other installations permitted under international law;
> (e) Freedom of fishing, subject to the conditions laid down in section 2;
> (f) Freedom of scientific research, subject to parts VI and XIII.
>
> 2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

The fundamental norm of the high seas regime, that ships are subject to the exclusive jurisdiction of the flag State when they navigate on the high seas is once again retained in United Nations Convention on the Law of the Sea, 1982. Article 92 (1) reads:

> Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas……

'Hot pursuit', which is an exception to the doctrine of the exclusive jurisdiction of the flag State, is also retained within the United Nations Convention on the Law of the Sea, 1982. Article

303(2) of the Convention creates a novel legal fiction in which archaeological and historical objects which are removed from the contiguous zone, are subject to the control of the Coastal State, including hot pursuit.[46] This notwithstanding, it didn't take away the fact that generally, the hot pursuit of a foreign ship takes place following a violation of the law of the pursuing State, committed within the marine spaces under the pursuing State's jurisdiction.[47] Certainly, the high seas lies outside the Coastal State's jurisdiction. If the foreign ship is within a contagious zone, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.[48]

There is another exception to the doctrine of exclusive jurisdiction which also does not translate into the right of a Coastal State to intervene on the high seas in case of a maritime casualty on the high seas, with dire consequences of pollution to her coastline. This is with regard to the regulation of illicit traffic in narcotic drugs or psychotropic substances. The ''*1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances''* (of which Ghana is a party) provides that a Party which has reasonable grounds to suspect that a vessel exercising freedom of navigation, flying the flag of another Party is engaged in illicit traffic may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures in regard to that ship.[49] But even here, these measures rely on the authorization of the flag State. The flag State therefore has preferential jurisdiction.[50]

With these limitations, it is clear that in case of any maritime casualty on the high seas, which could possibly pollute its coastline, the country is restrained from taking any actions on the high seas. It would therefore be in the interest of Ghana to incorporate the Intervention Convention and its Protocol, to empower it to be able to intervene on the high seas, in the event of a maritime casualty which could have major harmful consequences for her coastline. It is only when she has

[46] Tanaka, Yoshifumi; p. 123.
[47] Ibid; p. 163.
[48] Article 111 of The United Nations Convention on the Law of the Sea, 1982.
[49] Article 17(3) of the United Nations Convention against Illicit traffic in Narcotic Drugs and Psychotropic Substances.
[50] Tanaka, Yoshifumi; p. 168.

incorporated the Intervention Convention and its Protocol that she can invoke their full benefits of 'empowerment' to intervene on the high seas.

6.3 Increased Shipping Activities

With the discovery, exploration and production of oil and gas in the seabed of Ghana, there is bound to be increased shipping activities to and from the country, carting crude from the country and importing finished petroleum products. It also imports the bulk of manufactured goods and chemicals as raw materials for its various manufacturing industries. A maritime casualty, resulting in marine pollution by oil and other toxic and hazardous substances on the high seas cannot be ruled out. The country should be prepared, not only logistics wise, but also in having the necessary legal framework in place to empower her act on the high seas ,where the country's coastline could be threatened by pollution or where there would be the need to act so as to mitigate or eliminate such a threat to its coastline.

6.4 Impact on Tourism

Despite the division of the ocean into marine spaces or legal regimes, in reality, the ocean is one entity with free movement of the waves and tides from one regime to the other. A maritime casualty on the high seas could therefore also have a bearing for Ghana's coastline as the tides on the high seas could bring the pollutants to the coastline. This was one of the lessons of the ''Torrey Canyon" disaster.

The impact of tidal waves washing unto the country's coastline pollutants of oil and hazardous substances from the high seas could have a negative effect on her tourism industry. Oily beaches could sound a death knell to the tourism industry, just as it happened off the coasts of Brittany in the aftermath of the ''Torrey Canyon'' disaster for a long time.

The clamour for a new law in Ghana is not new, but these cries have largely gone unheeded.[51] Ghana needs to be proactive and should not wait for a maritime casualty on the high seas to occur, with dire consequences of monstrous proportions before taking steps to incorporate the Intervention Convention and its Protocol. The lessons of the "Torrey Canyon" are there to guide her.

[51] Buabeng G. Alexander:;Ghana Needs a New Law on Marine Pollution. http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=150587 (Accessed on 9th December, 2014).

CHAPTER 7: INCORPORATING THE INTERVENTION CONVENTION AND ITS PROTOCOL INTO THE LAWS OF GHANA

7.1 Dualism

Ghana has already signed and ratified the Intervention Convention. With regard to the 1973 Protocol however, it is not yet a party. Ghana has a dualist legal system, patterned on the English Law. And like all dualist States, the domestic law will not permit unimplemented treatise or Conventions to be given effect by the courts.[52] The Constitution of Ghana puts it beyond doubt. The relevant section reads;

> A treaty, agreement or convention executed by or under the authority of the President shall be subject to ratification by ---
>
> (a) Act of Parliament; or
>
> (b) A resolution of Parliament supported by the votes of more than one-half of all the members of Parliament.[53]

Thus the Parliament of Ghana would have to domesticate the Convention after its ratification as stipulated by its Constitution. It is only after its incorporation that it could be regarded as valid under its laws. This is more especially so as the Constitution of Ghana provides that one of the sources of the country's laws being enactments made by or under the authority of its Parliament.[54]

[52] Crawford, James; Brownlie's Principles of Public International Law, Oxford University Press, Oxford UK, 8th Ed, 2012 p. 63.
[53] Article 75(2) of the 1992 Constitution.

[54] Article 11(1) (b) of the 1992 Constitution.

7.2 The Process from Accession to Gazette:

Since Ghana has not ratified the 1973 Protocol, it would have to be advised to first accede to the 'Protocol to the International Convention Relating to Intervention on the High Seas in Cases of Pollution by Substances Other than Oil, 1973(with Annexed List of Polluting Substances) as stipulated under it.[55] After the accession, its Parliament can then be seized with the mandate to incorporate both the *'International Convention Relating to Intervention on the High Seas in cases of Oil Pollution Casualties, 1969' and the 'Protocol to the International Convention Relating to Intervention on the High Seas in Cases of Pollution by Substances Other than Oil, 1973(with Annexed List of Polluting Substances)* into its laws.

The Ghana Maritime Authority would be needed to work jointly with the Ministry of Transport in submitting proposals to Cabinet for study. After Cabinet approval, it would be forwarded to Parliament for consideration. After it has gone through the necessary Committee stages and reading in Parliament, would be passed into law, and forwarded to the President for his assent. The law comes into effect after publication in the gazette.

[55] Article IV (3) of the 1973 Protocol.

CHAPTER 8: EXPLANATION OF THE DRAFT TEXT OF THE INTERVENTION ON THE HIGH SEAS ACT

8.1 Seeking Prior Cabinet Approval (Section 4.1)

In the event of a maritime casualty on the high seas, which has the effect of dire environmental impact for the country's coastline, the minister of the environment is generally given a free hand to operate. These include taking action to move the ship, removal of the cargo or salvaging the ship or cargo if necessary. These are all listed in sections 2(1) (a) (i)-(iii). In sections 2(1) (a) (iv)-(vi) however, the actions which the minister could take involve the sinking or destroying a ship, sinking or destroying a ship's cargo or taking control of the ship. In sections 2(1) (a) (iv)-(vi), the minister is required to seek prior cabinet approval. The reason for introducing this restriction is mainly because of the peculiar circumstance of the Ghanaian constitution with regards to the powers of a minister.

Under sections 2(1) (a) (i)-(iii) of the draft text, the activities listed therein may have less consequences than the activities listed in Sections 2(1) (a) (iv)-(vi). The former sections are activities which the minister can handle routinely and administratively without any problems. However, in the latter sections, the listed activities are more serious if it is not well managed and could have grave implications for the security of the State, affect diplomatic relations with another State, or make the State liable for payment of compensation.

In Ghana, not all ministers are members of the cabinet. The cabinet comprises the President, the Vice President and not less than ten (10) and not more than nineteen (19) ministers of State.[56] The cabinet members, who are appointed by the President, are responsible for assisting the President in the determination of general policy of the Government.[57] The minister of

[56] Article 76 (1) of the 1992 Constitution.
[57] Article 76 (2) of the 1992 Constitution.

environment is therefore not an automatic member of the cabinet. It is a prerogative of the President.

It is therefore necessary to include this provision so that before a minister of environment takes any of the actions in Sections 2(1) (a) (iv)-(vi), cabinet is informed for the green light to be given at the highest possible level. If this restriction is not placed on the minister for the environment, it could result in a situation in which a non-cabinet minister could unilaterally, and at the blind side of the cabinet, take action which may have grave implications for the State.

Even if the minister of the environment is a cabinet member, it would still be necessary for cabinet to be consulted when the minister wants to exercise the powers granted him in Sections 2(1) (a) (iv)-(vi). This is due to their potential grave consequences for the State. It is very likely that it was in the light of this that the decision to bomb the ‘’Torrey Canyon” was collectively taken by the UK Prime Minister Harold Wilson, together with his cabinet.

More importantly, the activities listed in Sections 2(1) (a) (iv)-(vi) would involve the intervention of the military. The President of the Republic of Ghana is also the Commander-in-Chief of the Armed Forces.[58] The military would not act solely on the instructions of a sector minister. The President is however empowered to directly or indirectly through the Service Commanders of the Armed Forces, issue directives to the soldiers. The Minister for the Environment would therefore be rendered impotent in mobilizing the army to act under Sections 2(1) (a) (iv)-(vi), if he is given the power to take the final decision thereon.

[58] Article 57(1) of the 1992 Constitution.

8.2 The Inclusion of Ministers of Defence, Foreign Affairs and Transport (Section 4.2)

After having been given the green light by cabinet to exercise the powers granted in Sections 2(1) (a) (iv)-(vi), the Minister of Environment is required to act in conjunction with the ministers of defence, foreign affairs, and transport. This provision is not meant to unduly act as a fetter on the powers of the minister of environment, but rather to enhance them. This is because actions like sinking a ship or its cargo as stated earlier, would involve the military. The Navy and the Air Force would also be involved in those operations. The best person to coordinate with the Military Service Commanders, who would be giving the command to the soldiers, is the Minister of Defence. The Minister of Environment should therefore work hand in hand with the minister of defence.

The Minister of Foreign affairs has also been included as the actions that may be taken under Sections 2(1) (a) (iv)-(vi) may involve the ship or ships of other flag States. There would be the need for the Minister of Foreign affairs to constantly be in touch with these foreign States and updating them on these measures. He must therefore be on top of the issues. The Minister of Foreign affairs may also be needed to update other Coastal States who could be affected by the measures to be undertaken on the high seas by Ghana. By requesting the Minister of Defence to act in conjunction with the minister of foreign affairs, an effective linkage with these foreign States would be secured.

The Minister of Transport has been added because shipping falls under the transport ministry. The Minister of Transport would therefore be in a position to offer advice to the Minister of Transport with regards to aspects of shipping. This would ensure that the actions being taken by the Minister of Environment would conform to best shipping practices.

8.3 Non-inclusion of the full list of chemical substances in annex 'A'

'Oils and substances other than oil' has been defined in Section 15(4) (a) as crude oil, diesel oil, lubricating oil and those substances which have been listed in Annex A of this Act and any subsequent amendments that may be made, as well as 'those other substances which are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.' However, instead of listing all the chemicals in Annex 'A', reference has been made to the Annex of the 1973 Protocol itself as well as the International Maritime Organization (IMO) website for the full list of these chemicals. The list of chemicals has since the adoption of the Protocol in 1973 been amended four (4) times, namely in 1991, 1996, 2002, and 2007.[59]

This method serves two purposes. In the first place, the lists of chemicals are very long and if they are all to be annexed to this Act, the result would be a very bulky and confusing document. Secondly, it results in an 'open list' as opposed to a 'closed list' of the chemicals as provision is thus made for any revision of the list that may be made by the IMO in future. In this way, any revision of the list of chemicals by the IMO is automatically applicable to this Act, without having to resort to an amendment.

8.4 Penalty Units (Section 13)

The use of penalty units in fixing fines in enactments is mandatory in Ghana.[60] When the amount of money to be paid as a fine is in the Ghanaian currency (the cedi), it tends to lose value over time with the depreciation of the cedi and therefore may have to be reviewed frequently by Parliament. With the penalty units however, the Attorney General is empowered to periodically

[59] http://cil.nus.edu.sg/1973/1973-protocol-relating-to-intervention-on-the-high-seas-in-cases-of-pollution-by-substances-other-than-oil/ (accessed on 18/4/15).
[60] Section 1 of Fines (Penalty Units) Act, 2000 (Act 572).

review by legislative instrument the value of each penalty unit which becomes the basis for computation of fines by the courts.[61]

[61] Section 2 of Fines (Penalty Units) Act, 2000 (Act 572.

DRAFT TEXT OF THE INTERVENTION ON THE HIGH SEAS ACT, 2015 (ACT XXXX)

INTERVENTION ON THE HIGH SEAS ACT, 2015 (ACT XXXX)

ARRANGEMENT OF SECTIONS

INTERVENTION ON THE HIGH SEAS ACT, 2015 (ACT XXXX)

AN ACT to incorporate the International Convention relating to Intervention on the High Seas in cases of Oil Pollution Casualties, 1969 and the Protocol to the International Convention relating to Intervention on the High Seas in cases of Pollution by Substances other than Oil, 1973 (with annexed list of Polluting Substances) into the Laws of Ghana and to provide for related matters.

DATE OF ASSENT: XXXX

BE IT ENACTED by Parliament as follows:

PART ONE ------BASIS AND PROCEDURE FOR INTERVENTION

Section 1 Basis for intervention:

(1) Where the minister after consultation with the relevant authorities, is satisfied that, following upon a maritime casualty on the high seas or acts related to such a casualty, there is grave and imminent danger to the coastline of Ghana, or to the related interests of Ghana, from pollution of the sea by oil and substances other than oil, which may reasonably be expected to result in major harmful consequences, the minister may take such measures as considered necessary, to prevent, mitigate or eliminate the danger.

(2) Where oil or substances other than oil are escaping, or have escaped, from a ship involved in a maritime casualty on the high seas , or the minister is satisfied that they are likely to escape from such a ship, the minister may, take such measures as it considers necessary:

(a) to prevent, or reduce the extent of, the pollution or likely pollution, by the oil or substances other than oil of any Ghanaian waters, or coast;

(b) to prevent damage, or reduce the extent, or likely extent, of damage, to any of the related interests of Ghana by reason of the pollution, or likely pollution, of the sea by the oil or substances other than oil;

(c) to protect any Ghanaian waters or coast from pollution or likely pollution by the oil or substances other than oil;

(d) to protect any other related interests of Ghana from damage by reason of the pollution, or likely pollution, of the sea by the oil or substances other than oil; or

(e) in a case where the oil or substances other than oil have escaped—to remove or reduce the effects, or likely effects, of pollution or likely pollution, on any Ghanaian waters or coast or any of the related interests of Ghana.

Section 2- Modes of Intervention

(1) Without limiting the generality of Sections 1 and 2 of this Act, the measures that the minister may take under this section in relation to the ship, or ships involved in the maritime casualty include:

(a) the taking of action:

(i) to move the ship or part of it to another place;

(ii) to salvage the ship, part of the ship or any of the ship's cargo;

(iii) to remove cargo from the ship;

(iv) to sink or destroy the ship, or part of the ship;

(v) to sink, destroy or discharge into the sea any of the ship's cargo; or

(vi) to take over control of the ship; and or

(b) the issuing of directives:

(i) to the owner of the ship or any other ship; or

(ii) to the master of the ship or any other ship; or

(iii) to any salvor in possession of the ship; or

(iv) to the owner or controller of any tangible asset; or

(v) to any other person necessary in the minister's view.

Section 3 Analogous substances

Whenever the minister takes action with regard to a substance referred to in section 15 (4) (b) of this Act, the State shall have the burden of establishing that the substance, under the circumstances present at the time of the intervention, could reasonably pose a grave and imminent danger analogous to that posed by any of the substances enumerated in the list referred to in 'Annex A' below.

PART TWO -------- GENERAL RESTRICTIONS

Section 4 Restrictions on the minister

(1) The minister shall need prior approval of cabinet before taking measures in Section 2 (1) (a) (iv)-(vi) of this Act.

(2) Subject to Section 4 (1) of this Act, the measures in Section 2 (1) (a) (iv)-(vi) shall be taken in conjunction with the Ministers for Defence, Foreign Affairs and Transport.

(3) However, no measures shall be taken under this Act against any warship or other ship owned or operated by a State and used, for the time being, only on government non-commercial service.

Section 5 Preliminary matters

Before taking any measures in accordance with Sections 1 and 2 of this Act, the minister shall:

(a) consult through the minister of foreign affairs, with other countries affected by the maritime casualty, particularly with the flag State or States of the ship or ships involved.

(b) notify without delay the proposed measures to any persons physical or corporate known to the State or made known to it during the consultations, to have interests which can reasonably be expected to be affected by those measures.

(c) take into consideration any views that may be submitted in the course of consultations and notifications in Sections 5(a)and 5(b).

(d) consult with independent experts, chosen from a list maintained by the Organization.

PART THREE-------EMERGENCIES, RESPONSIBILITIES AND CONSIDERATIONS

Section 6-Emergencies

In case of extreme emergency requiring measures to be taken immediately, the minister may subject to Sections 4(1) and 4(2), take measures rendered necessary by the urgency of the

situation, without prior notification or consultation or without continuing consultations already began as required under Section 5 of this Act.

Section 7- Responsibilities while taking measures

In the direction and conduct of measures under this Act, the minister shall use his best endeavors to:

(a) ensure the avoidance of risk to human life;

(b) render all possible aid to distressed persons, including facilitating repatriation of ships' crews; and

(c) not unnecessarily interfere with rights and interests of others, including the flag state of any ship involved, other foreign states threatened by damage, and persons otherwise concerned.

Section 8- Considerations of reasonable measures

(1) Measures taken under this Act shall be proportionate to the damage, actual or threatened to the coastline or related interests of Ghana and shall not go beyond what is reasonably necessary to prevent, mitigate or eliminate that damage.

(2) In considering whether measures are proportionate to the damage, the minister shall take into account:

(a) the extent and probability of imminent damage if those measures are not taken; and

(b) the likelihood of those measures being effective; and

(c) the extent of the damage which may be caused by such measures.

PART FOUR---------INDEPENDENT EXPERTS AND PAYMENT OF COMPENSATION**.**

Section 9- Independent experts

(1) In consultation with the Environmental Protection Agency, an expert on oil and substances other than oil shall be nominated by the minister and the name forwarded to the Organization.

(2) Such an expert shall satisfy the required qualifications as shall be prescribed by the Organization.

Section 10 – Payment of compensation

Where actions taken under by the Minister are in contravention with any procedure under this Act, and thereby cause damage to others, the State shall be obliged to pay compensation to the extent of the damage caused by measures which exceed those reasonably necessary to achieve the end in Section 1 of this Act.

PART FIVE---------- MISCELLANEOUS

Section 11 - Dispute Resolution

(1) Any dispute that may arise between Parties as to:

(a) whether measures taken under this Act are in contravention of sections of the Act; or

(b) whether compensation is obliged to be paid under Section 10 of this Act; or

(c) the amount of such compensation;

may be settled by negotiation.

(2) In the event of failure of negotiation between the Parties, the dispute shall be submitted upon request of any of the Parties concerned to conciliation or, if conciliation does not succeed, to arbitration, as set out in the 1969 Convention and annexed to this Act as 'Annex B'.

Section 12- Regulations

The Minister may, after consultations with the relevant authorities, by legislative instrument, make Regulations that are necessary to give effect to this Act.

Section 13- Offences and Penalties:

(1) Except as otherwise provided under this Act, a person who:

(a) wilfully refuses to comply with any directive or order given under this Act; or

(b) wilfully obstructs any person who is acting in compliance of an order or directive given under this Act; or

(c) wilfully violates any provision of this Act or any regulations made thereunder,

Commits an offence and shall be liable on summary conviction to a fine not exceeding 1000 penalty units or in default 3 years in prison, or both.

(2) It shall be a defence under this Section for an accused, if his refusal or failure to comply with any order or directive under this Act was caused by reasonable belief that compliance would have resulted in serious risk to human life, the proof of which shall be on him.

Section 14- Offences by Bodies of Persons

(1) Where an offence is committed under this Act or under Regulations made under this Act by a body of persons,

(a) in the case of a body corporate, other than a partnership, every director or an officer of that body shall be deemed to have committed that offence; and

(b) in the case of a partnership, every partner or officer of that body shall be deemed to have committed that offence.

Section 15-Interpretation:

In this Act, unless the context otherwise requires,

1. ‘’any other ship’’ means any ship other than the one or ones involved in a maritime casualty;

2. ‘’maritime casualty’’ means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or cargo;

3. ‘’minister’’ means Minister of Environment;

4. ‘’oil and substances other than oil’’ means:

(a) crude oil, diesel oil, lubricating oil and those substances enumerated in a list which shall be annexed to the present Act as ’Annex A’ and any subsequent amendment which may be made thereon, and

(b) those other substances which are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea;

5. ‘’Organization ’’ means International Maritime Organization;

6. “Parties’’ means the State and a physical or corporate person, or any foreign State affected by a directive or an action taken by the minister under this Act;

7. ‘’related interests’’ means the interests of a coastal State directly affected or threatened by the maritime casualty, such as:

(a) maritime coastal, port or estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;

(b) tourist attractions of the area concerned;

(c) the health of the coastal population and the well-being of the area concerned, including conservation of living marine resources and of wildlife;

(8) ‘’relevant authorities’’ means the Environmental Protection Agency, Ghana Maritime Authority and any other Specialized body on hazardous and toxic substances.

(9) ‘’ ship’’ means:

(a) any sea-going vessel of any type whatsoever, and

(b) any floating craft, with the exception of an installation or device engaged in the exploration and exploitation of the resources of the sea-bed and the ocean floor and the subsoil thereof;

10. ‘’The Intervention Convention’’ means the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969;

11. ‘’The Protocol’’ means Protocol to the International Convention Relating to Intervention on the High Seas in Cases of Pollution by Substances Other than Oil.

ANNEX A

Oils and substances other than oil as covering crude oil, diesel oil, lubricating oil and those substances established by the Marine Environment Protection Committee of the Organization in accordance with Article 1(2) (a) of The Protocol, which is listed in the Annex and subsequently amended as:

(1) 1991 Amendments (MEPC.49 (31);

(2) 1996 Amendments (MEPC.72 (38);

(3) 2002 Amendments (MEPC.100 (48);

(4) 2007 Amendments (MEPC.165 (56).

The full text of the amendments may be accessible from the IMO website on http://www.imo.org/blast/mainframe.asp?topic_id=435&doc_id=3709.

ANNEX B

CHAPTER I

CONCILIATION

ARTICLE 1

Provided the Parties concerned do not decide otherwise, the procedure for conciliation shall be in accordance with the rules set out in this Chapter.

ARTICLE 2

1. A Conciliation Commission shall be established upon the request of one Party addressed to another in application of Article VIII of the Convention.

2. The request for conciliation submitted by a Party shall consist of a statement of the case together with any supporting documents.

3. If a procedure has been initiated between two Parties, any other Party the nationals or property of which have been affected by the same measures, or which is a coastal State having taken similar measures, may join in the conciliation procedure by giving written notice to the Parties which have originally initiated the procedure unless either of the latter Parties object to such joinder.

ARTICLE 3

1. The Conciliation Commission shall be composed of three members: one nominated by the coastal State which took the measures, one nominated by the State the nationals or property of which have been affected by those measures and a third, who shall preside over the Commission and shall be nominated by agreement between the two original members.

2. The Conciliators shall be selected from a list previously drawn up in accordance with the procedure set out in Article 4 below.

3. If within a period of 60 days from the date of receipt of the request for conciliation, the Party to which such request is made has not given notice to the other Party to the controversy of the nomination of the Conciliator for whose selection it is responsible, or if, within a period of 30 days from the date of nomination of the second of the members of the Commission to be designated by the Parties, the first two Conciliators have not been able to designate by common agreement the Chairmen of the Commission, the Secretary-General of the Organization shall upon request of either Party and within a period of 30 days, proceed to the required nomination. The members of the Commission thus nominated shall be selected from the list prescribed in the preceding paragraph.

4. In no case shall the Chairman of the Commission be or have been a national of one of the original Parties to the procedure, whatever the method of his nomination.

ARTICLE 4

1. The list prescribed in Article 3 above shall consist of qualified persons designated by the Parties and shall be kept up to date by the Organization. Each Party may designate for inclusion on the list four persons, who shall not necessarily be its nationals. The nominations shall be for periods of six years each and shall be renewable.

2. In the case of the decease or resignation of a person whose name appears on the list, the Party which nominated such person shall be permitted to nominate a replacement for the remainder of the term of office.

ARTICLE 5

1. Provided the Parties do not agree otherwise, the Conciliation Commission shall establish its own procedures, which shall in all cases permit a fair hearing. As regards examination, the Commission, unless it unanimously decides otherwise, shall conform with the provisions of Chapter III of The Hague Convention for the Peaceful Settlement of International Disputes of 18 October 1907.

2. The Parties shall be represented before the Conciliation Commission by agents whose duty shall be to act as intermediaries between the Parties and the Commission. Each of the Parties may seek also the assistance of advisers and experts nominated by it for this purpose and may request the hearing of all persons whose evidence the Party considers useful.

3. The Commission shall have the right to request explanations from agents, advisers and experts of the Parties as well as from any persons whom, with the consent of their Governments, it may deem useful to call.

ARTICLE 6

Provided the Parties do not agree otherwise, decisions of the Conciliation Commission shall be taken by a majority vote and the Commission shall not pronounce on the substance of the controversy unless all its members are present.

ARTICLE 7

The Parties shall facilitate the work of the Conciliation Commission and in particular, in accordance with their legislation, and using all means at their disposal:

(a) provide the Commission with the necessary documents and information;

(b) enable the Commission to enter their territory, to hear witnesses or experts, and to visit the scene.

ARTICLE 8

The task of the Conciliation Commission will be to clarify the matters under dispute, to assemble for this purpose all relevant information by means of examination or other means, and to endeavour to reconcile the Parties. After examining the case, the Commission shall communicate to the Parties a recommendation which appears to the Commission to be appropriate to the matter and shall fix a period of not more than 90 days within which the Parties are called upon to state whether or not they accept the recommendation.

ARTICLE 9

The recommendation shall be accompanied by a statement of reasons. If the recommendation does not represent in whole or in part the unanimous opinion of the Commission, any Conciliator shall be entitled to deliver a separate opinion.

ARTICLE 10

A conciliation shall be deemed unsuccessful if, 90 days after the Parties have been notified of the recommendation, either Party shall not have notified the other Party of its acceptance of the recommendation. Conciliation shall likewise be deemed unsuccessful if the Commission shall not have been established within the period prescribed in the third paragraph of Article 3 above, or provided the Parties have not agreed otherwise, if the Commission shall not have issued its recommendation within one year from the date on which the Chairman of the Commission was nominated.

ARTICLE 11

1. Each member of the Commission shall receive remuneration for his work, such remuneration to be fixed by agreement between the Parties which shall each contribute an equal proportion.

2. Contributions for miscellaneous expenditure incurred by the work of the Commission shall be apportioned in the same manner.

ARTICLE 12

The parties to the controversy may at any time during the conciliation procedure decide in agreement to have recourse to a different procedure for settlement of disputes.

CHAPTER II

ARBITRATION

ARTICLE 13

1. Arbitration procedure, unless the Parties decide otherwise, shall be in accordance with the rules set out in this Chapter.

2. Where conciliation is unsuccessful, a request for arbitration may only be made within a period of 180 days following the failure of conciliation.

ARTICLE 14

The Arbitration Tribunal shall consist of three members: one Arbitrator nominated by the coastal State which took the measures, one Arbitrator nominated by the State the nationals or property of which have been affected by those measures, and another Arbitrator who shall be nominated by agreement between the two first-named, and shall act as its Chairman.

ARTICLE 15

1. If, at the end of a period of 60 days from the nomination of the second Arbitrator, the Chairman of the Tribunal shall not have been nominated, the Secretary-General of the Organization upon request of either Party shall within a further period of 60 days proceed to such nomination, selecting from a list of qualified persons previously drawn up in accordance with the provisions of Article 4 above. This list shall be separate from the list of experts prescribed in Article IV of the Convention and from the list of Conciliators prescribed in Article 4 of the present Annex; the name of the same person may, however, appear both on the list of Conciliators and on the list of Arbitrators. A person who has acted as Conciliator in a dispute may not, however, be chosen to act as Arbitrator in the same matter.

2. If, within a period of 60 days from the date of the receipt of the request, one of the Parties shall not have nominated the member of the Tribunal for whose designation it is responsible, the other Party may directly inform the Secretary-General of the Organization who shall nominate the Chairman of the Tribunal within a period of 60 days, selecting him from the list prescribed in paragraph 1 of the present Article.

3. The Chairman of the Tribunal shall, upon nomination, request the Party which has not provided an Arbitrator, to do so in the same manner and under the same conditions. If the Party does not make the required nomination, the Chairman of the Tribunal shall request the Secretary-General of the Organization to make the nomination in the form and conditions prescribed in the preceding paragraph.

4. The Chairman of the Tribunal, if nominated under the provisions of the present Article, shall not be or have been a national of one of the Parties concerned, except with the consent of the other Party or Parties.

5. In the case of the decease or default of an Arbitrator for whose nomination one of the Parties is responsible, the said Party shall nominate a replacement within a period of 60 days from the date of decease or default. Should the said Party not make the nomination, the arbitration shall proceed under the remaining Arbitrators. In the case of decease or default of the Chairman of the Tribunal, a replacement shall be nominated in accordance with the provisions of Article 14 above, or in the absence of agreement between the members of the Tribunal within a period of 60 days of the decease or default, according to the provisions of the present Article.

ARTICLE 16

If a procedure has been initiated between two Parties, any other Party, the nationals or property of which have been affected by the same measures or which is a coastal State having taken similar measures, may join in the arbitration procedure by giving written notice to the Parties

which have originally initiated the procedure unless either of the latter Parties object to such joinder.

ARTICLE 17

Any Arbitration Tribunal established under the provisions of the present Annex shall decide its own rules of procedure.

ARTICLE 18

1. Decisions of the Tribunal both as to its procedure and its place of meeting and as to any controversy laid before it, shall be taken by majority vote of its members; the absence or abstention of one of the members of the Tribunal for whose nomination the Parties were responsible shall not constitute an impediment to the Tribunal reaching a decision. In cases of equal voting, the Chairman shall cast the deciding vote.

2. The Parties shall facilitate the work of the Tribunal and in particular, in accordance with their legislation, and using all means at their disposal:

(a) provide the Tribunal with the necessary documents and information;

(b) enable the Tribunal to enter their territory, to hear witnesses or experts, and to visit the scene.

3. Absence or default of one Party shall not constitute an impediment to the procedure.

ARTICLE 19

1. The award of the Tribunal shall be accompanied by a statement of reasons. It shall be final and without appeal. The Parties shall immediately comply with the award.

2. Any controversy which may arise between the Parties as regards interpretation and execution of the award may be submitted by either Party for judgment to the Tribunal which made the award, or, if it is not available, to another Tribunal constituted for this purpose in the same manner as the original Tribunal.